UNITED NATIONS

EIGHTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/19
30 May 1990

ORIGINAL: ENGLISH

Item 7 of the provisional agenda*

UNITED NATIONS NORMS AND GUIDELINES IN CRIME PREVENTION AND CRIMINAL JUSTICE: IMPLEMENTATION AND PRIORITIES FOR FURTHER STANDARD-SETTING

Implementation of the Basic Principles on the Independence of the Judiciary

Report of the Secretary-General

Summary

This report has been prepared in response to the recommendations by the Economic and Social Council in its resolution 1986/10, section V, welcomed by the General Assembly in its resolution 41/149. It summarizes and analyses the replies of various Member States to a survey on the implementation of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh Congress, endorsed and welcomed by the General Assembly in its resolutions 40/32 and 40/146. Special attention is given to the dissemination of the Basic Principles, the problems encountered in their implementation, qualifications and status of judges and suggestions for the future implementation of the Basic Principles, including the role of the United Nations. The report also contains information received from the United Nations institutes on crime prevention and criminal justice, as well as from intergovernmental organizations and non-governmental organizations in consultative status.

*A/CONF.144/19.

V.90-85155 6755T

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INTRODUCTION

1. In 1985, the Seventh Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary.* The Congress recommended them for national, regional and interregional action and called upon the Committee on Crime Prevention and Control to consider their implementation as a matter of priority. The Secretary-General was requested to ensure their widest possible dissemination and to report on their implementation.

2. The General Assembly, in its resolution 40/32, endorsed all resolutions adopted by the Seventh Congress, and, in its resolution 40/146, welcomed the Basic Principles and invited Governments to respect them and take them into account in their national legislation and practice.

3. On the recommendation of the Committee on Crime Prevention and Control, the Economic and Social Council, in its resolution 1986/10, section V, invited Member States to inform the Secretary-General every five years, beginning in 1988, on the progress achieved in the implementation of the Basic Principles. It also requested him to pay special attention to their dissemination, their incorporation into national legislation, the problems encountered in implementing them at the national level and any assistance that might be needed from the international community. The Secretary-General was requested to report thereon to the Eighth Congress. The General Assembly, in its resolution 41/149, welcomed these recommendations.

4. Accordingly, the Secretary-General, on 31 December 1987, sent a note verbale and a questionnaire to Member States. The Secretariat also requested information from United Nations institutes on crime prevention and criminal justice as well as from relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council. As of 20 April 1990, 72 States,** representing less than half of the

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*See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

**Algeria, Argentina, Australia, Austria, Bahamas, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chad, China, Colombia, Côte d'Ivoire, Czech and Slovak Federal Republic, Cuba, Denmark, Ecuador, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Honduras, Hungary, Iraq, Israel, Italy, Jamaica, Japan, Kuwait, Lesotho, Liechtenstein, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Morocco, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Rwanda, Saint Lucia, Singapore, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Tuvalu, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela and Yugoslavia. The following United Nations institutes, intergovernmental organizations and non-governmental organizations also contributed information: African Regional Institute for the Prevention of Crime and the Treatment of Offenders, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, United Nations Interregional Crime and Justice Research Institute, United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, Council of Europe, Organization of African Unity, African Bar Association, International Association of Judges and International Commission of Jurists.

United Nations membership, had replied. The present report is based entirely on the information provided to the Secretariat.

I. UNITED NATIONS ACTION

A. Crime prevention and crimial justice programme

5. In order to assist the United Nations in its work and to facilitate the implementation of the Basic Principles, an International Expert Meeting on the United Nations and Law Enforcement was held under the auspices of the United Nations at Baden, near Vienna, from 16-19 November 1987, organized by the Government of Lower Austria and the City of Baden, in co-operation with the Alliance of NGOs in Crime Prevention and Criminal Justice, Vienna. The meeting formulated, inter alia, proposals for the elaboration of the draft Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, which were further refined at the Interregional Preparatory Meeting for the Eighth Congress on the Prevention of Crime and the Treatment of Offenders on topic 5 and then submitted to the Committee on Crime Prevention and Control at its tenth session in 1988 (E/AC.57/1988/4). On the recommendation of the Committee, the Economic and Social Council adopted the Procedures by resolution 1989/60, which was endorsed by the General Assembly in its resolution 44/162. The Procedures are set out in the annex to Economic and Social Council resolution 1989/60.

6. Individual Member States, the Secretary-General, the United Nations regional institutes on crime prevention and control, as well as intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council, are called upon in the Procedures to assist in the implementation of the Basic Principles. In particular, States are requested to include them in their justice systems, and to respect them by publicizing them (both to the general public and the members of judiciary), advising all judges of their contents, promoting seminars on the role of the judiciary, and providing adequate resources for the functioning of the judicial system. The responsibilities of the United Nations include dissemination of the Principles, collection of information, provision of technical assistance to interested Governments and preparation of quinquennial reports on their implementation.

B. Human rights programme

7. The Commission on Human Rights, in its resolution 1989/32 1/ on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, inter alia, welcomed the close co-operation that had been established between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, and requested the Secretary-General to strengthen that co-operation further. Governments were invited to take into account, in implementing the Basic Principles, the principles set forth in the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1), elaborated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and its Special Rapporteur, Mr. L. M. Singhvi (India).

8. Subsequently, the Commission on Human Rights, in its resolution 1990/33, 2/ inter alia, welcomed the close co-operation between the Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs. The

Commission also endorsed Sub-Commission resolution 1989/22 (E/CN.4/1990/2, chap. II, sect. A), in which the Sub-Commission had invited one of its members, Mr. Louis Joinet (France), to prepare a working paper, to be submitted to its forty-second session, on how it could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers.

9. In order to strengthen technical co-operation in the area of human rights in the administration of justice, advisory services were rendered to the Government of Colombia by the United Nations human rights programme. A follow-up training course was organized at Rome in September 1989, in co-operation with the Government of Italy, the Centre for Human Rights and the United Nations Interregional Crime and Justice Research Institute.

C. United Nations institutes

10. In 1987, the United Nations Office at Vienna, in co-operation with the United Nations Interregional Crime and Justice Research Institute at Rome, started preliminary work on the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary. The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders regularly conducts international seminars or training courses for practitioners at all levels of the administration of justice. The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders used the Basic Principles at the first meeting of the Presidents of the Latin American Supreme Courts, held in December 1988. The Basic Principles had already been disseminated by the Latin American Institute throughout 1987 and 1988 and will continue to be distributed in conjunction with its future activities. The Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, has disseminated both the Basic Principles and their implementation procedures to a working group established by the Minister of Justice of Finland to prepare the Finnish participation in the Eighth Congress. Following the establishment of the African Regional Institute for the Prevention of Crime and the Treatment of Offenders at Kampala, African States are being consulted about their requirements and priorities in crime prevention and criminal justice, with special regard to the independence of the judiciary, for inclusion in the Institute's future work programme.

II. INFORMATION PROVIDED BY GOVERNMENTS

A. Implementation of the Basic Principles on the Independence of the Judiciary

1. National legislation or practice

11. The majority of reporting Governments noted that the provisions of the Basic Principles were already embodied in the constitution or laws of their countries. For instance, in Brazil the judiciary had been independent since the first Brazilian constitution had come into force in 1924. One of the principal objectives cited in the Argentine constitution was the "strengthening of justice". Austria pointed out that the Basic Principles were a fundamental tenet of its judicial system. Although New Zealand did not have a written constitution, some of the Basic Principles were applied in practice, and a bill of rights, incorporating the Basic Principles, had been proposed.

2. Availability of the Basic Principles

12. Most reporting Governments observed that the Basic Principles on the Independence of the Judiciary had been published in the main languages of their countries. Some countries, for example Algeria, Austria, Belgium, Finland, Jamaica and Nicaragua, reported that they intended to do so.

13. Some countries, for instance Bolivia, Brazil, Bulgaria, the Byelorussian Soviet Socialist Republic, Cameroon, Cuba, the Czech and Slovak Federal Republic, Gabon, Kuwait, Morocco, Nigeria, Singapore, the United Arab Emirates and Venezuela, mentioned that the Principles had been made available in their own languages to judges, lawyers and members of the executive and also to the general public. In most of the other countries the Principles were not publicly available. Although the method of dissemination varied, the Principles had been brought to the attention of judges, lawyers and members of the executive through governmental channels, such as bar associations, magistrate unions and informal networking.

3. National seminars and training courses

14. Several Governments observed that they had used the Basic Principles in seminars and training courses at the professional and para-professional levels, for example Bulgaria, the Byelorussian SSR, Colombia, Ecuador, Nigeria, Poland and Yugoslavia. Canada noted that they had been distributed to the Canadian Association of Law Teachers for dissemination to its members, as well as to those of the Canadian Judicial Council and the Canadian Bar Association. Belgium reported that the Basic Principles were covered in courses on constitutional law, criminal law and judicial procedure. Australia indicated that the use of the Basic Principles in seminars and training courses was at the discretion of the individual educational institutions. Finally, Bulgaria, the Byelorussian SSR, Colombia, Ecuador and Yugoslavia also mentioned that they used the Principles for seminars, courses or meetings.

4. Difficulties encountered*

15. According to the few Governments that provided information on this point, the main difficulties in implementing the Basic Principles stemmed from insufficient budgetary resources. In many countries, financial and economic crises placed additional constraints on already scarce resources. As a result, lower priority was often accorded to implementing the Basic Principles than to other, seemingly more urgent, matters. Honduras noted that the budget annually allocated was too small to meet even the minimal requirements of the judiciary. Several of the countries that reported budgetary problems, also indicated that their judges were underpaid and overworked.

16. Belgium noted that language difficulties made implementation difficult, though the Government was seeking a solution. Non-observance of the right to an impartial tribunal was also cited as a source of difficulty.

17. Several countries suggested ways in which the obstacles could be overcome. Ecuador stressed that increased economic resources could alleviate the problems, while Uruguay indicated that the Basic Principles

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*See also section III, paragraphs 50 and 54-69.

could be implemented effectively only when judiciaries were made financially independent. China suggested various specific measures, including mass education on legal subjects, strengthening of the legal systems and institutional reforms.

B. Qualifications and status of judges

1. Selection

18. The majority of reporting Governments pointed out that judges in their legal system were appointed and not elected, but some countries mentioned that both systems applied. For instance, in Switzerland, the method is determined by the law of each canton, and therefore varies within the country. The following countries reported that their judges obtained office through appointment: Algeria, Argentina, Austria, Australia, Bahamas, Belgium, Brunei Darussalam, Cameroon, Canada, Finland, France, Gabon, Germany, Federal Republic of, Honduras, Israel, Italy, Jamaica, Japan, Kuwait, Lesotho, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Morocco, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Saint Lucia, Singapore, Sweden, Thailand, Tunisia, Turkey, Tuvalu, United Kingdom and Uruguay.

19. Judges were elected in China, Cuba, the Byelorussian SSR, the Czech and Slovak Federal Republic, the German Democratic Republic, the Ukranian Soviet Socialist Republic, the Union of Soviet Socialist Republics and Yugoslavia. Although election procedures varied, the judges were chosen, either directly or indirectly, by the public. For example, the Byelorussian SSR employed four different election methods: first, lay assessors were selected by citizens' assemblies; secondly, district judges were elected by direct secret ballot during general elections; thirdly, territorial and regional judges were elected by local councils of people's deputies; and fourthly, the Supreme Court was elected by the Supreme Soviet governing body. In Yugoslavia, by contrast, judges were elected by the corresponding municipal, provincial or federal assembly.

20. Where judges were appointed, appointments were made either by the executive or by a judicial body. In some countries, such as Austria, Japan, Sweden and the United Republic of Tanzania, the executive selected a judge from a list of candidates prepared by either a judicial body or an independent authority. In others, for instance Singapore and Tunisia, the selection must be made in consultation with the Ministry of Justice, the Chief Justice of the country's highest court, or both. Executive appointments in several countries, including Algeria, Argentina, Australia, Kuwait, Malta, Nigeria, Tuvalu and the Republic of Korea, required the consent either of the legislature or of some judicial body, be it the Supreme Court or a specially created commission. In Finland, Honduras, Italy, Portugal and Uruguay the appointment of judges rested exclusively with the judiciary. In certain cases, however, there were exceptions for justices of the Supreme Court. Furthermore, in many countries the judicial appointments were based on a competitive examination.

2. Qualifications

21. The general criteria for holding judicial office were fairly consistent among countries replying to the survey. Although details might vary, most countries emphasized that, in order to qualify, a candidate must have a law degree, or the equivalent thereof, as well as a minimum number of years of

experience as a practising lawyer, solicitor or barrister. The minimum number of years varied depending on the level of the appointment. In many countries, such as Colombia, Côte d'Ivoire, the Czech and Slovak Federal Republic, France, Germany, Federal Republic of, Honduras, Italy, Luxembourg, Madagascar, Poland, Spain, Thailand and Venezuela, a judge must also pass a competitive examination. Some countries, for instance the Byelorussian SSR, the Federal Republic of Germany, Luxembourg, Thailand and Uruguay, required a candidate to have completed a training period. A number of countries, for instance Honduras, Hungary, Israel, Kuwait, Niger, Portugal and Turkey, mentioned that their laws required citizenship as a prerequisite for holding judicial office. In Norway the law stipulated that judges must be financially solvent at the time of appointment.

22. The criteria for occupying judicial posts tended to vary in accordance with the level of the post. For instance, in the Bahamas, Malta and Nigeria, the higher the post, the greater the number of years of experience required. In Israel and Saint Lucia, judges must gain experience in a lower court before they could sit on a higher court. Norway determined the level of appointment according to the candidates' rank upon graduation from university.

23. Some countries also specified other prerequisites. For example, the law of the USSR set a minimum age of 25 for eligibility to judicial office. Similarly, anyone over 25 years could be elected as a lay judge or lay assessor of a district peoples' court in the Ukrainian SSR. Such types of prerequisites might not, however, apply uniformly to all judicial posts within a system. For example, the more stringent requirements for professional judges in the Byelorussian SSR and in the Czech and Slovak Federal Republic did not apply to lay or people's judges.

3. Terms of office

(a) Length of service

24. The majority of the Governments emphasized that the conditions of service for judges were, in general, identical to those of other civil service officials. Their replies showed that the length of service for judges fell into three main categories: a fixed term; for life; or until the attainment of a mandatory retirement age. In most countries the latter practice prevailed. Some countries reported systems that combined a fixed term with mandatory retirement.

25. Countries with a fixed term of office included the Byelorussian SSR, China, Colombia, Cuba, the Czech and Slovak Federal Republic, the German Democratic Republic, Korea, Paraguay, the USSR and Yugoslavia. Elected judges were more likely to have fixed terms than appointees. Although the term generally ran for four or five years, the period could vary, depending on the country and the level or type of judgeship. For instance, lay assessors in countries such as the Byelorussian SSR and the USSR were elected for two-and-a-half-year terms, while professional judges hold office for twice that long. Similarly, in the Czech and Slovak Federal Republic, lay judges served for four years, while their professional counterparts were elected to 10-year terms. In Paraguay, a judge could be re-elected at the end of his five-year term. If a judge was initially elected or appointed to a fixed term, additional factors could nevertheless affect the overall duration of his tenure. Korean judges (appointed by the President) could serve consecutive 10-year terms. The initial term could also be shortened. For example, judges

in the Byelorussian SSR, the German Democratic Republic and the Republic of Korea, for example, must leave office if they reached a mandatory retirement age before their term ended.

26. In most reporting countries, judges served for life or until reaching a mandatory retirement age. That did not necessarily mean that this could never be removed. According to the national constitution of Argentina, for example, judges were not appointed literally for life but rather for "the duration of their good conduct". Generally, in cases of life-time appointments, the law provided for some type of impeachment process in the event of judicial or even non-professional misconduct.

27. The majority of the reporting countries noted that judges served only until the mandatory retirement age. The lowest reported retirement age was 60, for judges in Thailand and for some judges in the Republic of Korea. Canada, Lesotho and the United Kingdom allowed judges to remain in office until the age of 75, the highest reported. The retirement age of Swedish judges was settled by collective agreement. In many countries the age of retirement depended on the level of the judicial office. Under special circumstances, some countries, including Brunei Darussalam, Lesotho, Morocco and Saint Lucia, could extend the age of retirement for a fixed number of years, thus allowing judges to complete cases that had started before they reached retirement age. Even before retirement, however, the judge's right to hold office is not absolute. Once again, national law usually laid down impeachment criteria, varying from removal for "inability or misbehaviour" (New Zealand), removal for "incapacity or grave misconduct" (Nigeria) and removal only by judicial judgement (Norway) to removal only if "manifestly unfit" (Sweden).

(b) Remuneration

28. The majority of the reporting Governments observed that judges were paid reasonably well. A number of countries, for instance Austria, Belgium, China, the Czech and Slovak Federal Republic, Denmark, the German Democratic Republic, Hungary, Italy, Japan, Kuwait, Luxembourg, Madagascar, Nicaragua, Niger, Norway, Pakistan, Portugal, the Republic of Korea, Tuvalu, the United Republic of Tanzania and Uruguay, reported that the remuneration was the same, or even slightly higher, than that for other civil service officers or professionals of a comparable educational background. In addition to their salaries, judges in the German Democratic Republic received a bonus for long years of service. In the Federal Republic of Germany and various other States, remuneration was adequate, but the work-load had been increasing in recent years owing to a rise in the number of cases and the small number of judicial appointments. Because judicial salaries in Switzerland depended upon the financial resources of the cantonal confederation of judges, disparities in remuneration between judges in that country had been as great as 100 per cent. A few countries, for example Ecuador and Portugal, reported inadequate salaries and heavy work-loads.

29. In several countries, judges were entitled to additional benefits, such as car allowances, travel and vacation allowances, living quarters, and free electricity, water and gas. New Zealand judges, for example, were entitled to 12 months of sabbatical leave after 10 years of service and, by administrative arrangement, generally took six months after five years. In the Czech and Slovak Federal Republic, where the office of a people's judge was honorary, the State covered expenses. Most reporting Governments indicated that pension schemes for judges were available.

30. Many States stressed that judicial salaries were safeguarded by constitutional or legislative provisions. The salary of a judge in New Zealand for example, could not be reduced during his or her term of office. In Turkey, judges could not be deprived of their salaries even if their court or post was abolished.

31. The replies showed that judges' office hours varied widely. In Argentina, judges of first instance were available in their offices on working days during the courts' working hours, while judges of the Supreme Court and of the National Courts of Appeal were present only at meetings and hearings. Similarly, in the Federal Republic of Germany judges needed to be in court only when required by sessions, meetings or other official business. Judges in Belgium did not have fixed office hours.

(c) Liability

32. Several countries provided information on the liability of judges and on judicial immunity. Among the countries reporting some measure of immunity from civil suits were Pakistan, the Philippines and Singapore. In Singapore the conduct of judges could not be discussed in Parliament except upon a motion by at least one quarter of the total membership. New Zealand reported that, while judges of the High Court were fully immune, district court judges who exceeded or acted without jurisdiction could be liable for damages but were fully indemnified by the State.

33. Some countries, for instance Austria, France and Sweden, reported that victims of judicial misconduct could institute claims against the State, rather than the judge. In France and Austria, such a claim was the victims' only avenue of redress; they were barred from proceeding directly against the judge. An Austrian or French judge could, however, be required to indemnify the State for any damage awards paid for which the judge was responsible. Still, judges could enjoy some additional protection from the State's claim for indemnification. In Austria, for example, judicial liability would only arise in cases of gross negligence or intentional misconduct.

34. In Cuba and Switzerland, judges were not immune to civil suits, while the Government of Honduras observed that injured parties could bring such suits in the next highest instance.

35. Judges in some countries might enjoy limited protection from criminal liability. In the Byelorussian SSR, the Ukrainian SSR and the USSR, a judge could not be subjected to criminal trial, arrests or administrative sanctions without the consent of the Presidium of the Supreme Soviet. Similarly, in Kuwait, there could be no penal actions against judges unless authorized by the Supreme Council of the Judiciary.

(d) Personal security

36. Reporting Governments attributed great importance to the personal security of the judiciary. Judges in Algeria, the Bahamas, Belgium, Brazil, the Czech and Slovak Federal Republic, Italy, Jamaica, Kuwait, Lesotho, Luxembourg, Morocco and the United Kingdom,* among others, could call upon the services of their countries' police or security forces. When required, around-the-clock

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*In Northern Ireland the security of judges is safeguarded by personal guards 24 hours a day.

security was provided to judges in Italy and Jamaica. Colombia took special precautions to protect judges who presided over drug-trafficking cases. In Paraguay, the Security Division was incorporated into the judiciary. In Gabon, judges could ask for permission to carry a weapon if they were threatened, although that had not happened so far.

37. Countries could also protect judges' personal safety by securing the premises where they worked. Several court buildings in Canada, including the Supreme Court Building, had metal detectors through which everyone must pass. Security checks might also be made in Sweden if attendance at a particular court session was likely to entail some risk.

38. Some countries, among them Argentina, Cuba, Finland, Honduras, Mauritius, New Zealand, Poland, Sweden, Switzerland and Yugoslavia, observed that special security measures were not considered necessary, primarily because dangerous situations rarely occurred. Many of those countries emphasized, however, that special measures would be taken in exceptional cases such as trials against terrorists.

39. In most reporting countries, insults, threats, pressures or attacks directed against members of the judiciary were punishable offences. Mexican law provided for additional custodial sentences for persons committing offences against public officials, including judges, engaged in the performance of their duties. In Tunisia, assaults on judges in the performance of their duties were punishable by death.

(e) Removal from office

40. The majority of Governments reported that judges could be removed before the expiry of their term of office only for inability to discharge their functions or for gross misconduct. Norway indicated that insolvency subsequent to appointment might also be a sufficient reason for dismissal.

C. Application of the Basic Principles

41. Most reporting Governments were of the view that wider publicity and dissemination would facilitate the implementation of the Basic Principles. New Zealand stressed the need to inform the general population about the benefits to be gained by translating the Basic Principles into day-to-day reality.

42. Several countries suggested methods for promoting the Basic Principles. Canada proposed publishing them in the popular press and in legal journals. Honduras suggested the establishment of a judicial college. Many Governments also reported that seminars and conferences helped to ensure a better understanding of them.

1. Role of the United Nations

43. The majority of the reporting Governments considered that the United Nations should continue to play a vital role. Australia suggested that it should monitor compliance with the Basic Principles on a continuing basis. Honduras pointed out that the activity of certain institutions, such as the United Nations Latin America Institute for the Prevention of Crime and the Treatment of Offenders or the Inter-American Court of Justice, had helped to promote more effective implementation of the Basic Principles. Argentina and Austria thought that the United Nations should assist in setting up an international network for the exchange of information and collaborative action by national courts.

44. With regard to technical co-operation, Algeria reported that it had drawn on the services of the Interregional Adviser in Crime Prevention and Criminal Justice. Paraguay also stressed the usefulness of technical co-operation, especially as a vehicle for information-sharing and comparison between individual nations. Cuba noted that its Ministry of Justice had benefited from the expertise of the Interregional Adviser. Morocco proposed that the United Nations should formulate and implement specific projects relating to the judiciary to meet the needs of interested States.

45. China welcomed the exchange of experience on the basis of the 1987 Memorandum of Understanding between the Chinese Ministry of Justice, the United Nations Department of Technical Co-operation, the United Nations Office at Vienna and the United Nations Interregional Crime and Justice Research Institute.

2. International and regional seminars and training courses

46. Many countries, for example Algeria, China, Honduras, Jamaica, Peru and Poland, felt that international seminars, expert meetings, training courses and the exchange of information and ideas were useful ways of ensuring more effective regional and international implementation of the Basic Principles. Turkey noted that it might also be achieved through bilateral or multilateral arrangements between nations - such as study visits - organized regionally.

47. Canada observed that it had in the past strongly supported national and international seminars. The first World Conference on the Independence of Justice had been held at Montreal in June 1983, while the Canadian Institute for the Administration of Justice had conducted a seminar on the independence of the judiciary in October 1987.

48. Cuba had also organized international events and noted that it was prepared to hold further seminars and courses designed to help promote the implementation of the Basic Principles in conjunction with other countries of the region. Mexico and Morocco likewise supported the organization of seminars and courses. Morocco would welcome, in particular, the participation of legal specialists in seminars and courses organized by the United Nations.

III. INFORMATION PROVIDED BY OTHER SOURCES

A. Commission on Human Rights

49. The Special Rapporteur on Summary and Arbitrary Executions, in the report on his visit to Colombia (E/CN.4/1990/22/Add.1), had drawn the attention of the Commission on Human Rights at its forty-sixth session to the fact that in recent years the victims of summary or arbitrary executions had included a Minister of Justice, an Attorney General, various justices of the Supreme Court and High Court, and many other judicial officials. A number of ministers of justice had been compelled to resign because of death threats to them or their relatives and some seven or eight judges had had to leave the country for the same reasons. In some cases, the reprisals by paramilitary groups against judges had even included the killing of relatives. According to the Colombian Judicial Union, one fifth of the 4,379 judges in that country were under threat of death. Moreover, not all the threatened judges could benefit from police protection. Even when provided, it might be inadequate. The killing of judges and the lack of police protection had led in 1989 to a number of strikes by judges and judicial officials.

50. The Special Rapporteur had further emphasized that almost all the judges and law officers in Colombia who had spoken to him had stressed that the judiciary faced additional problems. Judicial proceedings, for instance, were based to an excessive degree on oral evidence. In the existing context of violence, few people were willing to testify, out of fear for their lives. Without witnesses, investigations made little progress, given the shortage of technical facilities for ascertaining the facts. It had also been pointed out that the judiciary needed a well-equipped technical criminal investigation body, to carry out the instructions of the judge and work exclusively under his guidance. A further problem was lack of resources with which to pay the salaries and to expand facilities in the light of the growing demand.*

B. Regional intergovernmental organizations

51. The Organization of African Unity (OAU) noted that it had actively participated in seminars on the Basic Principles organized in the African region. It drew attention to the African Charter on Human and Peoples' Rights, concluded under the auspices of OAU on 28 June 1981, which had entered into force on 21 October 1986, article 26 of which provided that States had the duty to guarantee the independence of the courts, and article 7 of which dealt with the individual's right to a fair trial. In 1986, the African Commission of Human Rights had been established under the provisions of the Charter. Among its principal tasks was the formulation of principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments could base their legislation.

52. The Council of Europe noted that the Basic Principles were covered by the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by all member States of the Council.

C. Non-governmental organizations in consultative status with the Economic and Social Council

1. General observations

53. In several replies received from non-governmental organizations and members of the legal profession it was noted that observance of the independence of the judiciary gave rise to a number of difficulties. Although the constitutions of many countries included provisions similar to those contained in the Basic Principles, in practice they were not always adhered to. Coups d'état in several countries had been followed by the dismissal or transfer of judges and, occasionally, a complete purging of the courts. When that happened, existing constitutional guarantees were frequently not complied with. Another point of concern was that the Basic Principles did not tackle the question of whether courts had the competence to review constitutional issues.

54. It was also emphasized that judicial independence could be eroded by government action, which could remove the courts' jurisdiction, for example by creating special courts or tribunals, excluding certain government activities from the courts' scrutiny, determining which issues were of a judicial or administrative nature, exempting some cases from judicial review because

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*For further information on the situation of the judiciary in Colombia, see paragraphs 62-64 below.

national security was allegedly involved, and reversing judicial decisions by retroactive legislation. In many cases, judicial independence was further eroded by the inability of courts to enforce their decisions.

55. It was further stressed that those obstacles might be overcome if Governments recognized and respected the principle of separation of powers. That would allow courts to exercise their functions with respect to all crimes, including abuses of power, perpetrated by officials in the name of national emergency or security.

56. It was also suggested that the Basic Principles should be looked at in a broader context, so that the protection afforded in cases involving civil and criminal law could be the same. International co-operation was called for so that countries would be continuously aware of the situation of the judiciary world-wide. Such global awareness could, through international action, induce countries to adhere fully to the Basic Principles. It was further recommended that the United Nations Office at Vienna should collect information on violations of the Basic Principles and suggest appropriate remedies, with a view to enhancing judicial independence.

2. International Association of Judges

57. The International Association of Judges had informed all its members of the United Nations survey on the implementation of the Basic Principles. Most had been satisfied with the way in which the Principles were being implemented in their respective countries, and considered the different systems of appointment or election of judges to be adequate.

58. Several national judges' associations mentioned obstacles to the full implementation of the Basic Principles. In one country, whose Government had admitted that non-observance of the right to an impartial tribunal was an obstacle to implementation, the Association could see no progress towards translating the Basic Principles into reality. Government efforts in another country to decrease the remuneration of judges by administrative measures had met with opposition from the judges; all aspects of remuneration were currently determined there by law. With reference to a third country, concern was expressed over a law enacted in 1988 which had introduced new forms of civil responsibility for judges who had demonstrated inappropriate behaviour in the exercise of their functions or delayed decisions. Concern was also expressed about the absence, in another country, of opportunities for judges to defend themselves against disciplinary measures, especially dismissal, which sometimes took the form of enforced early retirement. At the same time, the executive of that country could refuse to accept a judge's resignation. Insufficient resources were also cited repeatedly as an obstacle to implementation of the Basic Principles.

59. Various national judges' associations suggested ways in which more effective implementation could be ensured at the national level, for example by enacting new legislation where legal provisions were insufficient or not in conformity with the Basic Principles, giving effect to the constitutional principles of separation of powers, ensuring that appointments of members of the judiciary and decisions on promotions were taken by higher judicial bodies, and improving judicial service structures. At the international level, the following proposals were made: global information campaigns; establishment of regional and international judicial organizations and intensification of co-operation between them; and provision of technical co-operation and advisory services to interested Governments.

3. International Commission of Jurists

60. The International Commission of Jurists (ICJ) had created the Centre for the Independence of Judges and Lawyers (CIJL) in 1978 to deal with obstacles to the independence of the judiciary and the legal profession. Its goals included: collecting and distributing information about the harassment and persecution of judges and lawyers; mobilizing international support; and educating lawyers, judges, government officials and the general public about the responsibilities and functions of judges and lawyers in society. The Centre had played an active role in developing international standards for the independence of judges and lawyers and had contributed significantly to the Basic Principles. It had also intervened in cases involving harassment, persecution or threats directed against individual judges or lawyers or bar associations, as well as the use of more subtle pressures such as post transfer to punish a judge for a decision unfavourable to the government.

61. The cases taken up by the Centre had varied greatly. In August 1989, it had submitted to the Sub-Commission on Prevention and Discrimination and Protection of Minorities a report on the harassment and persecution of judges and lawyers, describing the cases of 145 judges and lawyers who had been harassed, detained or killed between January 1988 and June 1989, including 34 judges and lawyers killed, 37 detained and 38 attacked or threatened with violence. Another 13 had been subject to professional sanction through disbarment, removal, banning etc. The countries with the most cases reported had been the Philippines (28, including 6 killed and 17 attacked or threatened with violence), Colombia (23, of whom 21 had been killed and 2 attacked or threatened) and Peru (15, including 2 killed and 9 attacked or threatened).*

62. ICJ referred to a report prepared by the President of the Colombian Judicial Union,** according to which the following factors had contributed to the gradual dissolution of judicial authority in that country:

(a) An inadequate budget, amounting to only 1.9 per cent of government expenditure;

(b) A recruitment policy in which promotion was subject to bureaucratic criteria or party affiliation;

(c) Lack of job security, as mandates of judges and magistrates did not exceed two or four years, respectively;

(d) Violence against judges: the Colombian judiciary had suffered two mass slaughters of its officials, the first in November 1985, which had left 110 dead in the Supreme Court building; and the second in January 1989, in which 14 judicial officials had been murdered by a paramilitary group in San Vicente de Chucurí, Department of Santander.

63. It was further emphasized in the report that six judges and their families had been forced to flee the country because of constant death threats. The already precarious situation had been exacerbated by the appearance of two groups that had threatened and murdered judges: the M.A.J. (Muerte a los

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*See also CIJL Bulletin, No. 24, p. 64.

**Ibid., pp. 15-21. See also section III, paragraphs 50 and 51, above.

Jueces: Death to Judges), which had emerged in Medellín, and the "Extraditables", which threatened to murder 10 judges for every Colombian extradited to the United States.

64. Furthermore, ICJ reported that it had conducted studies on the judiciary in various countries, using the Basic Principles as a yardstick, which had made recommendations for strengthening the independence of the judiciary. They included "Peru, la Independencia del Poder Judicial" (1989) and "L'indépendance des magistrats, des avocats et des officiers ministériels en République de Guinée" (1989).

65. In 1986, ICJ had begun a series of regional seminars, held in conjunction with local jurists' organizations, at which judges and lawyers had been requested to consider to what extent the Basic Principles and other international standards were adhered to in their regions.* The seminars had been held in: San José, Costa Rica, for Central America and the Dominican Republic (1986); Lusaka, for English-speaking East Africa (1986);** Banjul, for English-speaking West Africa (1987);** Kathmandu, for South Asia (1987); Buenos Aires, for Argentina, Brazil, Paraguay and Uruguay (1988); Tagaytay City, for South-East Asia (1988); and Tobago, for the Commonwealth Caribbean (1988).

66. At the regional seminars, ICJ encouraged participants to organize national seminars on more local problems. In November 1988, the first such seminar had been held in Paraguay, sponsored by the Bar Association, the International Secretariat of Jurists for Amnesty and Democracy in Paraguay, and the Law Faculty. In May 1989, a seminar for Nicaraguan judges had been organized, in conjunction with the Supreme Court of Nicaragua, the Nicaraguan Human Rights Commission and the Inter-American Institute of Human Rights, in collaboration with the United Nations Centre for Human Rights. In November 1989, a national seminar in Pakistan had been held, sponsored by the Law Ministry and the Centre for Human Rights, while a conference in Peru the same month had been organized with the Supreme Court and the Andean Commission of Jurists. In January 1990, a seminar for Indian Supreme Court and High Court justices had been organized, again with the Centre for Human Rights.

67. In September 1989, ICJ had organized a special seminar in Grenada on the judiciary and human rights in the Commonwealth Caribbean, in conjunction with the Caribbean Justice Improvement Project of the University of the West Indies and the Centre for Human Rights. The seminar, which had brought together 55 leading Caribbean jurists, had called for greater efforts and regional co-ordination in the judicial application of human rights norms.***

68. In 1989, at Caracas, the ICJ and its Centre for the Independence of Judges and Lawyers had organized, together with the Government of Venezuela and under the auspices of the United Nations, an International Conference on the Independence of the Judges and Lawyers. It had brought together leading jurists from all over the world and had resulted in the adoption of the Caracas

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*See ICJ Report on Activities, 1986-1988.

**In co-operation with the African Bar Association, as also reported by that Organization in reply to the present survey.

***For details see CIJL Bulletin, No. 24, pp. 51-53.

Plan of Action. The Plan, inter alia, laid down the Centre's programme of work in support of the Basic Principles for several years ahead. The United Nations was urged to offer assistance to Governments in the implementation of international standards on the independence of justice, and in particular the Basic Principles, by providing research and training programmes as well as technical co-operation.*

IV. CONCLUDING REMARKS

69. The replies indicate that, in the majority of the reporting countries, the Principles had been published in the main language(s). They were also reflected to some degree in the constitutions or laws of most countries. The majority of Governments welcomed their wider dissemination, inter alia, through regional and international seminars as well as through United Nations technical co-operation.

70. It was further emphasized that, in most reporting countries, the independence of the judiciary was an essential guarantee for the promotion and protection of human rights, and was usually respected. In addition to the ordinary courts, there were proper and well-defined channels for the people to use if their rights were violated. The lack of machinery such as human rights commissions or an ombudsman could, however, make it more easy for human rights to be violated. The view was also expressed that the judiciary, in order to preserve its independence, should be given the responsibility of deciding on the qualifications of candidates to its ranks.

71. The replies from the non-governmental organizations tended to be less positive. It was observed that the Basic Principles were not always fully respected, a fact that was often not openly admitted by official sources. It was also felt that political commitment and strengthened international co-operation were necessary to implement the Basic Principles, for example through research, studies and dissemination of information. It was noted further that international and national human rights organizations had become more and more aware of human rights violations and had started to take concerted action, including the lodging of protests and the organization of observer missions.

72. Financial autonomy was regarded as essential for the independence of the judiciary. It was considered desirable that adequate funds should be made available to the courts and that judges should be granted a decent level of income to free themselves from serious financial problems, so as to ensure that they were independent and not subjected to undue pressure or susceptible to corruption. The quinquennial reporting requirement was also regarded as very important, since associations of judges and other agents of the administration of justice thus had an opportunity to present their views and concerns.**

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*For details, see CIJL Bulletin, No. 23, April 1989.

**For the importance and functions of reporting by Governments, see also the working paper prepared by the Secretariat on United Nations norms and guidelines in crime prevention and criminal justice: implementation and further standard-setting (A/CONF.144/18).

73. The survey shows that the United Nations Basic Principles on the Independence of the Judiciary are an important basis for protecting human rights, upholding professional standards and promoting social justice. But to be really effective, they must be applied in a favourable context: independence and impartiality may have little meaning where judges are under constant physical threat and psychological pressure, as is the case in some countries. Whether the adversary is corruption, organized crime, terrorism or an authoritarian and oppressive Government, the independence of the judiciary under such circumstances may be an untenable ideal. It is under such conditions that the solidarity and mutual support of judges within countries and across frontiers acquire special importance.

Notes

1/ Official Records of the Economic and Social Council, 1989, Supplement No. 2 (E/1989/20), chap. II, sect. A.

2/ Ibid., 1990, Supplement No. 2 (E/1990/22), chap. II, sect. A.

UNITED NATIONS

EIGHTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/19/Corr.1
28 June 1990

ARABIC AND
ENGLISH ONLY

Item 7 of the provisional agenda*

UNITED NATIONS NORMS AND GUIDELINES IN CRIME PREVENTION AND CRIMINAL JUSTICE: IMPLEMENTATION AND PRIORITIES FOR FURTHER STANDARD-SETTING

Implementation of the Basic Principles on the Independence of the Judiciary

Report of the Secretary-General

Corrigendum

Page 6, paragraph 13, penultimate line

For governmental read non-governmental

Page 8, paragraph 25, line 3

For Korea read Republic of Korea

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*A/CONF.144/1.

V.90-86073 6812T